

FUEL RESOURCES DEVELOPMENT CO.

IBLA 85-166

Decided April 8, 1986

Appeal from decision of the Craig, Colorado, District Manager, Bureau of Land Management, determining it was technically and procedurally correct to issue notice of incident of noncompliance CO-016-INC-163.

Reversed.

1. Oil and Gas Leases: Civil Assessment and Penalties--Oil and Gas Leases: Incidents of Noncompliance

Departmental regulation 43 CFR 3162.7-4(d)(1) (1984) required site facility diagrams to be filed within 30 days after new measurement facilities were installed or existing facilities were modified, and one who failed to file the required diagram was subject to a \$ 100 assessment under 43 CFR 3163.3(h) (1984). However, an assessment for violating this provision will be reversed if an appellant establishes that installation of the equipment had not been completed more than 30 days prior to issuance of the notice of incident of noncompliance.

APPEARANCES: Ronald R. Herrin, Supervisor, Production and Reservoir Engineering, for appellant.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Fuel Resources Development Company has appealed from the November 1, 1984, decision of the Craig, Colorado, District Manager, Bureau of Land Management (BLM), sustaining on technical and procedural review a \$ 100 assessment for failure to submit a site facility diagram required by 43 CFR 3162.7-4 (1984). 1/

[1] Subsection (d)(1) of that regulation provides that "facility diagrams shall be filed within 30 days after new measurement facilities are installed or existing facilities are modified." Whoever fails to file the required diagram may be assessed \$ 100 pursuant to 43 CFR 3163.3(h). This

1/ The regulations at 43 CFR 3165.3 indicated technical and procedural review should occur at the state office, rather than district office, level.

requirement is one of many relating to site security on federal oil and gas leases, and is intended to ensure proper measurement, disposition, and protection of production.

There appears to be no dispute concerning the facts involved in this appeal which are set forth by appellant as follows:

In the fall of 1983, a separator and meter station were moved onto location and construction started to connect the well to the pipeline. Before the work could be completed, the work was halted by BLM directive due to the sensitive nature of the deer wintering range. Construction necessary to complete the connection of this well to the pipeline included the laying of a gathering line and installation and connection of orifice and temperature recording meters to the orifice meter run. The fact that measurement facilities were incomplete is the basis for our contesting this INC violation and fine.

Appellant's argument has merit. Under the regulation, it appears a measurement facility could be installed and put into operation before the expiration of the 30-day period in which to file a site facility diagram. The fact the regulation permits a measurement facility to be put into operation as much as 30 days before a site facility diagram is filed suggests site security was not compromised by appellant's failure to file a site security diagram prior to completion of installation in this case. We believe the regulation is properly construed as requiring a diagram 30 days after completion of the installation. ^{2/} Appellant adds support to this view by citing general enforcement guidelines which it asserts were distributed by BLM at a meeting held on October 30, 1984, in Grand Junction, Colorado. Section 8a (site facility diagrams) of those guidelines provides for assessment of \$ 100 "[i]f an operator has not filed a site facility diagram within 30 days of completion of construction of the production facility." (Emphasis added.) BLM does not dispute appellant's assertion that construction had not yet been completed when the assessment was made in this case.

Furthermore, BLM has suspended the issuance of assessments pursuant to 43 CFR 3163.3(h), except where actual loss or damage can be ascertained. 50 FR 11517 (Mar. 22, 1985). The assessment on appeal had been imposed under this regulation, and no actual loss or damage has been shown. Even if the incident of noncompliance here had been properly issued, it would still be appropriate to vacate the assessment because of the suspension. See Somont Oil Co., 91 IBLA 137 (1986).

^{2/} We further note that BLM has proposed to amend 43 CFR 3162.7-4(d)(1), to provide 60 days for compliance. 51 FR 3882, 3890 (Jan. 30, 1986). The preamble to the rule refers to a "completed" facility, id. at 3884, although this word does not appear in the text of the proposed regulation.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed.

Franklin D. Arness
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Will A. Irwin
Administrative Judge

